

EXHIBIT E

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO: :
U.S. ex rel. Ven-a-Care of : Hon. Patti B. Saris
the Florida Keys, Inc. :
v. :
Dey, Inc., et al. :
No. 05-11084-PBS :

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(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

CONTINUED DEPOSITION OF T. MARK JONES

Washington, D.C.

Monday, December 8, 2008

VOLUME III

1 a false claims case.

2 BY MR. KATZ:

3 Q. This is the same NMC?

4 A. Yes.

5 Q. And the lawsuit was brought pursuant to
6 the federal False Claims Act?

7 A. Yes.

8 Q. Ven-A-Care was a relator?

9 A. Yes.

10 Q. Can you briefly describe the nature of
11 the NMC case in 1994?

12 A. The false claims case?

13 Q. Yes.

14 A. The nature of it.

15 MR. BREEN: Again, this is all 30(b)(1)
16 testimony, correct?

17 BY MR. KATZ:

18 Q. Yes.

19 A. In a nutshell, NMC had an outpatient
20 dialysis unit that we happened to investigate
21 during the course of our lawsuit with them. And
22 they were, what we found, falsifying --

1 falsifying certificates of medical necessity to
2 qualify patients that are receiving ESRD
3 treatments, which is end stage renal disease, to
4 qualify them for a nutritional supplement called
5 IDPN, intradialytic parenteral nutrition. Very
6 few patients could ever qualify to receive it
7 through the program itself and we were able to
8 point out the false claims that they were
9 submitting, basically.

10 Q. How was this case resolved?

11 A. Well, it was through the Boston U.S.
12 Attorney's Office. The Boston U.S. Attorney
13 settled it.

14 Q. How much was it settled for?

15 A. I think that the total settlement was
16 over half a million -- half a billion dollars.
17 That's not the settlement that Ven-A-Care was
18 credited for. I think Ven-A-Care's portion was a
19 little over 300 million. And I don't -- I'm not
20 sure that's exactly accurate. There were other
21 relators involved that brought other claims
22 during the investigation.

1 you. Having said that, I'll let the witness
2 answer to the best of his ability.

3 BY MR. KATZ:

4 Q. Go ahead.

5 A. Could you repeat that, please?

6 Q. On an NDC by NDC basis, or a drug by
7 drug basis, does Ven-A-Care allege to be the
8 original source of the information?

9 A. Ven-A-Care typically gave all of its
10 pricing and cost information in its complaints,
11 and to the federal government. Yes. Ven-A-Care
12 has provided the federal government with, you
13 know, our price and cost information as being an
14 industry insider. I think Ven-A-Care certainly
15 can say this information came from within Ven-A-
16 Care, yes.

17 Q. And so Ven-A-Care contends that it has
18 direct knowledge with respect to each of these
19 NDCs, is that right?

20 A. Yes.

21 Q. And that direct knowledge would relate
22 to pricing, is that what you said?

1 A. Our pricing and cost records. Correct.

2 Q. Any other types of knowledge?

3 A. I believe all of our information came
4 from our pricing records, GPO records, wholesale
5 records. Now, we did have some companies
6 courting us like Pulmidose that would give us
7 information and prices on them as well. But no,
8 we had GPO -- contracts with several GPOs. We
9 had McKesson wholesaler. We had, you know,
10 traditional wholesalers. We had the special
11 wholesalers like JJ Balan, and ANDA and RDI. Our
12 information definitely came from that
13 marketplace.

14 BY MR. KATZ:

15 Q. What is Pulmidose?

16 A. Pulmidose was a company that was
17 courting Ven-A-Care and Criticare back in the
18 '90s. It was sort of a split fee situation where
19 Pulmidose would supply a particular amount of
20 drugs, and then pay a fee for supplying it.
21 There was some issues back in the '90s when they
22 didn't allow DME companies to bill for the

1 chargeback the \$30 to Dey, right?

2 A. Yes.

3 Q. And this is a concept that was
4 explained to the state and federal government
5 agencies, right?

6 A. I believe it was a part of our
7 presentations.

8 Q. And with respect to the federal
9 government, since 1995, Ven-A-Care has
10 continuously provided pricing information
11 relating to Dey's drugs, right?

12 A. I believe it was 1995 when Ven-A-Care
13 first provided the pricing information for Dey's
14 drugs.

15 Q. And you can look on the interrogatory
16 responses if it refreshes your recollection.

17 A. That's what it says.

18 Q. So 1995, right?

19 A. 1995.

20 Q. Where did Ven-A-Care obtain the pricing
21 information which it provided to the federal
22 government?

1 MR. BREEN: Objection. Form.

2 THE WITNESS: Well, I believe -- and I
3 need to look at it to be sure, but we had GPOs in
4 '95 that had Dey's prices in there. We also had
5 wholesalers that would give us prices all the
6 time.

7 BY MR. KATZ:

8 Q. And there were few occasions where Ven-
9 A-Care obtained some prices directly from Dey?

10 A. I know that Lewis Cobo had some
11 communications with Dey. I wasn't aware of them.
12 I mean, I've seen -- I've seen the document where
13 one of the sales reps were talking to Lewis. So
14 yes, he could have gotten them directly from Dey.

15 Q. And then Mr. Cobo would then have
16 provided that information to Ven-A-Care and Ven-
17 A-Care would then have provided that information
18 to the federal government, is that right?

19 MR. BREEN: Objection. Form.

20 THE WITNESS: Well, I think Mr. Cobo,
21 if he was at Ven-A-Care doing it, would do it for
22 Ven-A-Care.